

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

JOHNNY LEE DAVIS, *et al*,

Plaintiffs,

VS.

THE CITY OF ARANSAS PASS, *et al*,

Defendants.

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CIVIL ACTION NO. 2:13-CV-363

**MEMORANDUM OPINION AND ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL**

Plaintiff, proceeding *pro se* and *in forma pauperis*, is an inmate incarcerated at a federal prison facility in Bastrop, Texas. He filed this lawsuit pursuant to 42 U.S.C. § 1983, alleging defendants City of Aransas Pass, Texas, and officials from the Aransas Pass Police Department violated his First Amendment rights when they disseminated slanderous and libelous publications about him in connection with a murder investigation (D.E. 1). Pending is his first motion for appointment of counsel (D.E. 14).

In Bounds v. Smith, the Supreme Court held that a prisoner's constitutional right of access to the courts requires that the access be meaningful; that is, prison officials must provide pro se litigants with writing materials, access to the law library, or other forms of legal assistance. Bounds v. Smith, 430 U.S. 817, 829 (1977). There is, however, no constitutional right to appointment of counsel in civil rights cases. Akasike v.

Fitzpatrick, 26 F.3d 510, 512 (5th Cir. 1994); Branch v. Cole, 686 F.2d 264, 266 (5th Cir. 1982). Further, Bounds did not create a "free-standing right to a law library or legal assistance." Lewis v. Casey, 116 S. Ct. 2174, 2180 (1996). It is within the Court's discretion to appoint counsel, unless the case presents "exceptional circumstances," thus requiring the appointment. 28 U.S.C. § 1915(e)(1); Cupit v. Jones, 835 F.2d 82, 86 (5th Cir. 1987).

A number of factors should be examined when determining whether to appoint counsel. Jackson v. Dallas Police Department, 811 F.2d 260, 261-62 (5th Cir. 1986) (citing Ulmer v. Chancellor, 691 F.2d 209 (5th Cir. 1982)). The first is the type and complexity of the case. Id. Plaintiff's allegations are not complex.


The second and third factors are whether the plaintiff is in a position to adequately investigate and present his case. Plaintiff's pleadings demonstrate that he is reasonably intelligent, articulate, and able to describe the facts underlying his claims. He appears, at this stage of the case, to be in a position to adequately investigate and present his case.

The fourth factor which should be examined is whether the evidence will consist in large part of conflicting testimony so as to require skill in the presentation of evidence and in cross-examination. Examination of this factor is premature. Plaintiff's claims have not yet been screened pursuant to 28 U.S.C. § 1915A.

Plaintiff has not shown that exceptional circumstances require the appointment of counsel. In addition, there is no indication that appointed counsel would aid in the efficient and equitable disposition of the case. The Court has the authority to award attorneys' fees to a prevailing plaintiff. 42 U.S.C. § 1988. Plaintiff is not prohibited from

hiring an attorney on a contingent-fee arrangement. Plaintiff's motion for appointment of counsel (D.E. 14) is denied without prejudice at this time. This order will be *sua sponte* reexamined as the case proceeds.

ORDERED this 6th day of February, 2014.


B. JANICE ELLINGTON
UNITED STATES MAGISTRATE JUDGE